

**TASK FORCE ON TRIAL COURT  
EMPLOYEES**

**INTERIM REPORT**

**May 7, 1999**

## TABLE OF CONTENTS

	Page
<b>Executive Summary</b>	1
<b>Part I      Background and Introduction</b>	
Background and Statutory Mandate	4
Membership	5
Task Force's Duties	5
Judicial Council's Duties	6
General Assumptions	7
Timeline and Schedule	8
Continuing Work of the Task Force	9
Meeting Process and Communication	10
<b>Part II      Definition of Trial Court Employee</b>	
Background	13
Development of Survey Definition of Trial Court Employee	13
Survey Definition of Trial Court Employee	15
Development of Final Definition of Trial Court Employee	16
Final Definition of Trial Court Employee	17
Considerations: Final Definition of Trial Court Employee	18
<b>Part III      Definitions of Employment Status Options: State, County, Court, and Other</b>	
Background	19
Employment Status Definitions	20
Exhibit III-1: Revised Working Employment Status Definitions	21
<b>Part IV      Components of a Personnel System: The Recommended Models</b>	
General Background of Recommended Models	22

	<b>Page</b>
<b>A. Classification and Salary</b>	
Background	24
Education: Classification and Salary	24
Assumptions and Objectives: Classification and Salary	25
Recommended Classification Model	27
Considerations: Classification	28
Impact for Employment Status Options: Classification	29
Recommended Salary Model	30
Considerations: Salary	31
Impact for Employment Status Options: Salary	32
<b>B. Employment Protection System</b>	
Background	33
Education: Employment Protection System	33
Assumptions and Objectives: Employment Protection System	34
Recommended Employment Protection System Model	35
Considerations: Employment Protection System	37
Impact for Employment Status Options: Employment Protection System	39
<b>C. Defined-Benefit Retirement Plan for Current Employees</b>	
Background	41
Education: Defined-Benefit Retirement Plan for Current Employees	41
Assumptions and Objectives: Defined-Benefit Retirement Plan for Current Employees	42
Recommended Defined-Benefit Retirement Model for Current Employees	44
Considerations: Defined-Benefit Retirement Plan for Current Employees	45
Impact for Employment Status Options: Defined-Benefit Retirement Plan for Current Employees	45
Exhibit IV-1: Working Impact of Current Employees Choosing County Defined-Benefit Plan	53
<b>D. Meet and Confer</b>	
Background	
Education: Meet and Confer	47
Assumptions and Objectives: Meet and Confer	47
Recommended Meet and Confer Model	48
Considerations: Meet and Confer	49
Impact for Employment Status Options: Meet and Confer	50
	51

**Part V      Advisory Vote and Public Entity Poll**

Background	54
Timing of the Advisory Vote and Public Entity Poll	55
Advisory Vote and Public Entity Poll Content and Education	55
Subcommittee for Proposing the Advisory Vote Process	55
Administration of the Vote Process	55
Assumptions and Objectives: Trial Court Employee Advisory Vote	56
Assumptions and Objectives: Public Entity Poll	57

**Part VI      Trial Court Employee Survey and Documentation**

Background	59
Assumptions and Objectives: Trial Court Employee Survey	59
Trial Court Employee Survey	59
Education	60
Pilot Testing	60
Confidentiality	61
Survey Definition of Court Employee	61
Survey Reporting Date: June 30, 1998	61
Description of Survey Information	61
Documentation of Provisions Relating to Trial Court Employee Classification, Compensation, and Benefits	62

**Part VII      Instructions for Comments on the Interim Report of the Task  
Force on Trial Court Employees**

Format for Comments	63
Deadline for Submission of Comments	63

## EXECUTIVE SUMMARY

The Task Force on Trial Court Employees (the task force) was statutorily created by the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) to make recommendations to the State Legislature for the establishment of a personnel system for the trial court employees of California. This interim report discusses the development of and the considerations behind the task force's preliminary recommendations for the various components of a personnel system for trial court employees that has uniform statewide applicability.<sup>1</sup>

Although the Act (also commonly referred to as AB233) mandates that the task force design a new personnel system for trial court employees, nowhere in the statute is the term trial court employee defined. One of the first undertakings of the task force, therefore, was to establish a working definition of trial court employee. The task force's definition of this term can be found in **Part II** of this report, following the introduction (**Part I**).

The Act also requires that the task force recommend an employment status for trial court employees: state, county, court, or other. Just as the statute does not define trial court employee, it does not define any of these four employment status options. Thus, the task force created working definitions of the various employment status options. In defining the employment status options, the task force assumed that any trial court structure would have to be consistent with the judicial branch of government and independent of the executive and legislative branches. Likewise, the task force assumed that state employment would be something different from trial court employment, which, in turn, would be different from county employment. Consistent with the legislation, all of the status options emphasize local trial court management and assume a financing structure in which the state is the principal financial source. The various employment status options as defined by the task force are discussed in **Part III** of this report.

Every government personnel system includes basic components such as classifications to describe job duties and minimum qualifications; salary guidelines to accompany those classifications; descriptions of employee protection policies (for example, at will, cause, and so on); benefit descriptions; and provisions for employee representation. The task force was charged with studying and making recommendations for these key personnel structure components. In making its

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<sup>1</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, 77605(b).

preliminary recommendations, the task force concluded that broad definitions were most appropriate, as detailed recommendations would involve policy decisions outside the purview of the task force.

To date, the task force has drafted recommendations for the following components of a new personnel structure for trial court employees: (1) classification, (2) salary, (3) employment protection system, (4) retirement, and (5) meet and confer. In formulating its recommendations, the task force examined the impact of each component in relation to the various employment status options. The task force's recommendations and supporting considerations for each of the personnel structure components completed to date can be found in **Part IV**. The task force's recommendations for a sixth component, benefits, are not yet complete and will be included in its final report. In the final report, the task force will also address transition issues related to a personnel system with uniform statewide applicability.

The Act requires the task force to prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county<sup>2</sup> to determine employees' preferences in relation to the employment status options of state, court, and county. The task force deemed it necessary to conduct this employee advisory vote before formulating its final recommendations. In addition to assessing the preferences of trial court employees, the task force deemed it necessary to poll affected public entities, especially the trial courts and the counties. Under the statute, the courts, the counties, and the state must concur with any recommended employment status option that includes that entity. For example, the counties and the courts must concur if trial court employees are to remain county employees. Similarly, the courts and the state must concur if trial court employees are to become state employees. In making its final recommendations, the task force will take into consideration the data from the trial court employees advisory vote as well as the findings from the public entities. More detailed information regarding the employee advisory vote and public entity poll can be found in **Part V**.

To make informed recommendations regarding the most appropriate personnel structure for trial court employees, the Act requires the task force to conduct a survey of personnel and benefits systems currently in place in the trial courts. The survey must obtain information on current trial court employees' classifications, salaries, retirement benefits, health benefits, labor agreements, and other related data. **Part VI**

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<sup>2</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, 77603(h).

of this interim report contains more specific information regarding the trial court employee survey. **Part VI** also discusses the task force's duty to document existing statutory, constitutional, and other provisions related to the classification, compensation, and benefits of trial court employees.

**Part VII** explains how to submit comments about the interim report.

In summary, this interim report intends to inform the various interested individuals and entities as to its tentative recommendations and the considerations behind those recommendations for a personnel structure for trial court employees with uniform statewide applicability.

## **PART I**

### **BACKGROUND AND INTRODUCTION**

This interim report contains the findings and recommendations of the Task Force on Trial Court Employees regarding its work and recommendations to date with respect to the issues listed in Government Code section 77603. This report is being circulated for comment to the counties, the judiciary, the Legislature, the Governor, and local and state employee organizations. This interim report is intended to outline the framework of the trial court employee personnel structure, provide information regarding the work of the task force, clarify the role of the task force, and provide an opportunity for comments and suggestions by interested parties before the task force prepares its final report. This report is not a draft of the task force's final report but a documentation of its agreements to date. The instructions for submitting comments regarding this interim report are in Part VII. This interim report also appears on the task force's Web site at <http://www2.courtinfo.ca.gov/tcemployees>. The final report of the task force is scheduled to be sent to the same parties by September 3, 1999.

#### **Background and Statutory Mandate**

On September 13, 1997, the California Legislature passed the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) and established the state's primary responsibility for funding trial court operations. The Governor signed the bill into law on October 13, 1997. For many years before the Act, trial courts sought an effective and stable financing system that would provide equal access to justice for all California citizens, regardless of the financial health of individual counties.

The Act established a Task Force on Trial Court Employees to lay the foundation for a personnel structure. The task force is responsible for studying key personnel issues, including employee status, classification, salary, retirement benefits, bargaining agreements, and functions performed by counties, to recommend a personnel structure for trial court employees. The task force is charged in the Act with recommending an appropriate system of employment and governance for trial court

<sup>3</sup> The personnel system is to have uniform statewide applicability and promote organizational and operational flexibility.<sup>4</sup> The Legislature stated its intent to adopt a plan to transition all existing court employees to appropriate employment status, recognizing the state's assumption of trial court costs.<sup>5</sup>

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<sup>3</sup> Gov. Code, § 77600.

<sup>4</sup> Gov. Code, § 77605(b).

<sup>5</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, § 3(g), (2).



## Membership

The Act created an 18-member task force and specified the terms of its membership. As indicated specifically by the Act,<sup>6</sup> the membership is as follows:

- Four representatives of the trial courts, appointed by the Chief Justice, representing two urban, one suburban, and one rural court;
- Four representatives of counties appointed by the Governor from a list of nominees submitted by the California State Association of Counties;
- Three representatives appointed by the Senate, of which two represent trial court employee organizations;
- Three representatives appointed by the Speaker of the Assembly, of which two represent trial court employee organizations;
- The Director of the Department of Personnel Administration, or a designee;
- The Chief Executive Officer of CalPERS, or a designee;
- The Director of Finance, or a designee; and
- An appellate court justice to serve as a nonvoting chair.

The Judicial Council of California, Administrative Office of the Courts (AOC), is designated in the Act to provide staff support to the task force.<sup>7</sup> The Judicial Council of California, chaired by the Chief Justice, is a constitutionally created body that provides policy direction to the courts and provides recommendations to the Governor and state Legislature about court practices, administration, and procedures. The AOC is the staff agency for the council and assists both the council and its chair in performing their duties. The AOC Human Resources Bureau provides staff support to the task force. The California State Association of Counties and the Legislative Analyst have provided additional staff support to the task force.<sup>8</sup>

## Task Force's Duties

The Act mandates that the task force perform the following duties:<sup>9</sup>

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine the costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;

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<sup>6</sup> Gov. Code, § 77601(a), (h).

<sup>7</sup> Gov. Code, § 77602.

<sup>8</sup> *Ibid.*

<sup>9</sup> Gov. Code, § 77603(a), (i).

- Document existing constitutional, statutory, and other provisions relating to the classification, compensation, and benefits of court employees;
- Identify functions relating to trial courts that are provided by county employees;<sup>10</sup>
- Examine and outline issues relating to various options for employment status (county, court, state, and other);
- Prepare a method for submitting the issue of employment status to an advisory vote of trial court employees; and
- Recommend a personnel structure for trial court employees.

To fulfill its charge, the task force has considered the variation in and diversity of personnel systems in California trial court systems, including differences in retirement systems, benefits, status, and local personnel issues. The task force, in making its recommendations, has taken into consideration the needs of the entire court system, including 226 municipal court judges, 1,254 superior court judges, and approximately 18,000 court employees in 98 courts in 58 counties, each court system having a different classification system, different salaries, different benefits, a different retirement system, and different memoranda of understanding.

A major objective of the task force has been to minimize the disruption of the trial court workforce and protect rights accrued by employees under their current systems. The legislative intent that no provision of the Act should reduce the salaries or benefits of trial court employees has been a guiding principle in shaping the recommendations of the task force.<sup>11</sup>

### **Judicial Council's Duties**

The Act specifies that the Judicial Council is to submit findings and recommendations to establish a system of uniform court employee classifications, which may provide for local flexibility.<sup>12</sup> The Judicial Council will consider the recommendations of the task force and create broad classifications that provide courts and employees with maximum flexibility.

### **General Assumptions**

The task force has interpreted the Act to mean that it must create a broad policy framework for the trial court personnel system, while refraining from entering into local administrative decisions, state budgetary decisions, and recommendations regarding individual employees. Although not specified in the Act, the task force operated under the following general assumptions:

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<sup>10</sup> The task force interprets the Act to mean county employees who are not court employees.

<sup>11</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, §§ 3(g), (1).

<sup>12</sup> Gov. Code, § 77605(a).

- Task force actions and recommendations apply only to employees who meet the task force definition of court employee. It is not within the purview of the task force to submit recommendations about non-court employees.
- The survey of trial court employees should collect data about benefits because they are a basic tenet of any personnel structure. The Act specifies the intent that trial court employees' salaries and benefits should not be reduced as a result of the Act;<sup>13</sup> therefore, an accounting of current benefits must be completed and analyzed.
- The advisory vote should be informative to the task force as it makes its final recommendations relative to the appropriate employment status of trial court employees. The Act does not specify by whom or when the advisory vote of trial court employees should be conducted, only that the task force must recommend a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.<sup>14</sup> The task force determined that to recommend a personnel structure, it must take into consideration the results of the trial court employee advisory vote.
- State funding contribution levels should not significantly increase as a result of the trial court personnel structure.
- The State of California will not delegate its authority to set budgetary levels for the courts. The task force agreed that any budgetary increases must be approved through the state budget process, and such matters are not within the scope of the task force's mandate.
- It is not within the legislative mandate of the task force to make recommendations about items that involve specific state budgetary actions, including the number of employees needed.
- Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997. County funding obligations (County General Fund Base Amount) for trial court operations are capped at fiscal year 1994-1995 levels, reduced, or no longer required.<sup>15</sup>
- The judicial branch is independent from the personnel systems governing employees of the executive and legislative branches of state and local government. When forming recommendations for the development of a trial court employee personnel structure, task force discussions were conducted within the context of the separation of powers doctrine.

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<sup>13</sup> *Ibid.*

<sup>14</sup> Gov. Code, § 77603(h).

<sup>15</sup> Gov. Code, §§ 77200–77201.

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- The implementation of the trial court employee personnel system shall not reduce the retirement or other benefits or contribution levels of current trial court employees.
- The trial courts will operate under a decentralized system of trial court management, which ensures the local authority and responsibility of trial courts to manage day-to-day operations.<sup>16</sup> The task force developed its policy recommendations consistent with the concept in the Act that trial courts will retain local management and operational control.
- Current personnel systems vary substantially among trial courts; these variations can continue to exist under the new system. The task force determined that a one-size-fits-all structure would not be effective, but instead fashioned uniform broad policies that trial courts can operate within.
- Statutory changes will be required as a result of the implementation of the trial court personnel system; federal and constitutional changes are not anticipated.

### **Timeline and Schedule**

The Act specified the time frame for the work of the task force.<sup>17</sup> Although the Act legislated that the task force members be appointed by October 1, 1997, and begin their work prior to January 1, 1998, all appointments were not completed until late May 1998. The task force held its first meeting in June 1998. The task force staff requested from the President Pro Tempore of the Senate and the Speaker of the Assembly a revised schedule for the completion of the interim and final reports. In addition, the Judicial Council is seeking a statutory amendment during the current legislative session to conform the statute to the revised timeline. The legislated and revised timelines for the task force work are presented here.

#### ***Legislated Timeline***

10-01-97	Task Force Appointed
01-01-98	Task Force Has Met and Established Operating Procedures
01-30-99	Task Force Submits Interim Report
06-01-99	Task Force Submits Final Report
01-01-00	Judicial Council Submits Classification and Compensation Recommendations to the Legislature
01-01-01	Trial Court Personnel System Enacted by Legislature Takes Effect

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<sup>16</sup> Gov. Code, § 77001(a).

<sup>17</sup> Gov. Code, §§ 77604(c), (d), and 77605(a), (b).

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***Revised Timeline***

05-07-98	Task Force Appointed
06-04-98	Task Force First Meeting and Establishment of Operating Procedures
05-07-99	Task Force Submits Interim Report
09-03-99	Task Force Submits Final Report
01-01-00	Judicial Council Submits Classification and Compensation Recommendations to the Legislature
01-01-01	Trial Court Personnel System Enacted by Legislature Takes Effect

**Continuing Work of the Task Force**

In anticipation of its final report, the task force will consider comments received regarding this interim report and continue to refine its models for a recommended personnel structure for trial court employees. The task force will also continue to study benefits, retirement systems for new employees, and transition issues. The task force will conduct the trial court employee advisory vote and public entity poll regarding the employment status of trial court employees and analyze the results. The data from the Trial Court Employee Survey will be compiled and analyzed, and actuarial analyses of retirement systems will be completed. The task force intends to submit a final report with recommendations for a personnel structure to the counties, the judiciary, the Legislature, the Governor, and local and state employee organizations by September 3, 1999.

**Meeting Process and Communication**

As specified by the statute, the Task Force on Trial Court Employees comprises members from across the state who represent the interests of key stakeholder groups. As indicated earlier in this part, this diverse group includes representatives from the trial courts (judges, administrators, and labor representatives), the counties, the Department of Finance, the Department of Personnel Administration, and the Personnel Employees Retirement System.

Given the diverse interests represented by the task force members, the group needed to establish a meeting structure that allowed all members an opportunity to voice their different perspectives. The meeting structure also needed to ensure that no one faction dominated the outcome of group decisions. Additionally, it was important that the wide range of constituents represented by task force members be kept apprised of the group's ongoing work. To this end, the task force established several channels of communication to give constituents as much information and access to the task force's work as possible. Following are more detailed descriptions of the task force's meeting processes and methods of communicating with its public.

***Meeting Process***

To accomplish its charge, the task force holds monthly meetings. As previously mentioned, the group required a meeting process that ensured that the various needs of the diverse representatives were taken into account. To meet these needs, the task force adopted several consensus-based governance procedures. Most notable are two key decision-making processes:

*1) Decision-Making During Meetings*

As the need to reach a decision arises during a task force meeting, the group abides by the following process:

- First, determine whether there is consensus on the issue.
- If there is not full consensus among group members, discussion continues until the group:
  - Reaches consensus; or
  - Concludes that further discussion will not produce consensus.
- The group may decide that further research is needed before members can reach a decision on that particular issue. Following further research, the new information is shared with the group, and once again there is an attempt to reach consensus.
- If, after further discussion, still no consensus can be reached, the default process is majority vote.

*2) Decision-Making Outside of the Meetings*

Occasionally, logistics require that the task force move forward with certain decisions in between monthly meetings. To ensure that a consensus-based approach is maintained outside of the meetings, the following model was adopted by the group:

- Members are notified of a proposed decision or course of action.
- Members are then asked to respond by a specific date.
- If there are no objections or counterproposals, the decision is made or the action is taken.
- Minor changes are incorporated as appropriate, but major objections are brought to the entire group.

It should be noted that over the course of eleven meetings and many decisions, the task force has consistently managed to reach consensus on almost all issues. The need to reach agreement by majority vote has been the rare exception. The task force's substantive recommendations have all been adopted unanimously with one exception, where there was one dissenting vote.

***Communication with the Public***

From the beginning, the members of the task force have been extremely cognizant of the fact that their actions and final decisions will have an impact on many constituent groups, especially the approximately 18,000 trial court employees. The task force has, therefore, striven to establish ongoing communication with its audience by establishing several channels of communication.

*Public Comment*

Each month, the task force meets in a different location around the state to allow interested parties an opportunity to present their perspectives to the task force. At the beginning of each monthly meeting, 30 minutes are dedicated to public comment. Any interested party who wants to address the task force may do so. If this designated time slot is not convenient, a member of the public may request an alternative time by contacting task force staff prior to the upcoming meeting.

*Public Meetings*

Any member of the public is welcome to observe the monthly task force meetings. As mentioned under Public Comment, the task force meets at various locations around the state. The meetings give interested parties from a wide geographic range access to the work of the task force.

*Court and County Visits by Chair and Staff Project Leader*

Upon request, the chair of the task force, Justice James A. Ardaiz, and the staff project leader of the task force, Ms. Judith A. Myers, meet with specific courts or groups of court employees to address questions regarding the work of the task force. To date, Justice Ardaiz and Ms. Myers have met with many groups of court employees and court administrators and/or presiding judges across the state. They have also made presentations to the Task Force on Trial Court Facilities and other interested groups.

*Web Site*

Since August 1998, the task force has maintained a Web site designed for public access. Upon its creation, an announcement about the Web site was sent to all court administrators, encouraging them to distribute the announcement to their employees. The task force Web site contains general background information about the task force. The Web site also includes meeting minutes and draft working documents that have been approved by the task force to date. The Web site address is <http://www2.courtinfo.ca.gov/tcemployees>.

*E-Mail*

Members of the public are welcome to address questions and comments to the task force via e-mail. Task force staff distributes these questions and comments to all members of the task force. Although individual responses from the task force are not logistically feasible, the staff does post typical responses to frequently asked questions on the Web site. The e-mail address is [tcemployees@courtinfo.ca.gov](mailto:tcemployees@courtinfo.ca.gov).



## **PART II**

### **DEFINITION OF TRIAL COURT EMPLOYEE**

#### **Background**

Early in the process, the Task Force on Trial Court Employees determined that it would need to develop a definition of a trial court employee to clarify to whom the new personnel system recommended by the task force would apply. Specifically, the task force needed to determine:

- Who are the employees of the trial court who will be included in the classification, benefit, and salary systems established by the Legislature?
- When a decision is made regarding the status of trial court employees, who will that decision affect?

The task force also recognized that a definition would be necessary both to assist the courts and counties in identifying who should be included in the survey of trial court employees and to identify who should participate in an advisory vote of trial court employees.

The task force first received education on the legal definitions of an employment relationship and the control tests used by various agencies to differentiate between employees and independent contractors.

The task force decided that it should not identify court employees by the function performed because a function performed in one court by a court employee might, in another court, be performed by a county employee and, in another, by an independent contractor. The task force does not intend to change the status of any individual performing a function or service for the court. Only those employees who meet the definition of a trial court employee will be covered by the new personnel system. The definition of a trial court employee adopted by the task force focuses on individuals who meet two specific tests of an employment relationship: (1) those individuals who are included in the court's budget, and (2) those whose manner and means of work are within the control of the court.

#### **Development of Survey Definition of Trial Court Employee**

The task force initially developed a definition of trial court employee for purposes of the survey to be conducted of all trial court employees. The definition was needed to inform the courts and counties completing the survey about whom they should provide data. The task force decided to be more inclusive than might ultimately be necessary to ensure that the survey would collect the necessary data without the need

to return to seek more information from the courts and counties. The definition used for purposes of the survey is presented here.

**Survey Definition of Trial Court Employee**

**Definition:**

If questions (A) and (B) are *both* answered yes, the individual is a court employee for the purposes of this survey. If *either* question (A) or (B) is answered no, the individual is not a court employee for the purposes of this survey.

**A. Is the individual paid from the court's budget,<sup>18</sup> regardless of funding source?**

**B. Does the court<sup>19</sup> have the right to control the manner and means of the individual's work?**

For purposes of this survey, the court's right to control the manner and means of the individual's work means that the court has the authority to hire, supervise,<sup>20</sup> discipline,<sup>21</sup> and terminate the individual. The court's authority to hire, supervise, discipline, and terminate the individual need not be exclusive and may be shared with other entities, including county personnel offices and agencies with statutory or licensing authority.

This definition excludes: (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a Form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

This definition includes subordinate judicial officers (e.g., pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639).

**If the definition above excludes the functions/groups listed below, the survey will collect the following information from the court administrator, if available, on titles, duties, rates of pay, qualifications, and group benefits:**

Court security officers (including retirement information on this group);

Court interpreters;

Court reporters; and

Electronic recording monitors.

<sup>18</sup> For purposes of this survey, *court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. Includes local revenue, all grants, and trial court operations funds (Trial Court Funding Act, AB 233, Gov. Code, § 77009(b)).

<sup>19</sup> For purposes of this survey, *court* includes judges in their individual or collective capacity, or their appointees, who are vested with the authority to hire, supervise, discipline, and terminate.

<sup>20</sup> For purposes of this survey, *supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.

<sup>21</sup> For purposes of this survey, *discipline* is defined as a procedure such as a reprimand, demotion, suspension, or reduction in pay that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

**Development of Final Definition of Trial Court Employee**

The initial definition was developed for use only in the survey. The survey requested data on individuals performing certain functions for the court to provide the task force with as much information as possible about traditional court functions such as court reporting and court security. However, some of the individuals included in the survey do not meet the control test that defines an employment relationship because they are independent contractors or employees of another entity. Therefore, the task force reviewed and narrowed the definition of trial court employees to include only those individuals who are truly employees of the court and not independent contractors or employees of another entity. Only individuals who meet the definition of a trial court employee will participate in the advisory vote. The new personnel system adopted by the Legislature will apply only to employees described by this definition.

<b>Final Definition of Trial Court Employee</b>
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**Definition:**

An individual is a trial court employee if:

- A. The individual is paid from the court's budget, regardless of the funding source; and**
- B. The court has the right to control the manner and means of the individual's work, which means that the court has the authority to hire, supervise, discipline, and terminate the individual.<sup>22</sup>**

If either statement (A) or (B) is not true, the individual is not a trial court employee.

**Specific Inclusions and Exclusions:**

This definition includes those subordinate judicial officers, that is, commissioners and referees, who meet this definition.

This definition excludes: (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a Form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

**Definitions of Terms:**

- *Court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. These funds include local revenues, all grants, and trial court operations funds.<sup>23</sup>
- *Court* is defined as judges or their appointees, who are vested with or delegated the authority to hire, supervise, discipline, and terminate.
- *Supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.
- *Discipline* is defined as a procedure such as a reprimand, demotion, suspension, reduction in pay, or termination that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

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<sup>22</sup> The court's process and procedure for hiring, supervising, disciplining, and terminating the individual may involve other entities, including county personnel offices and agencies with statutory or licensing authority.

<sup>23</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, Gov. Code § 77009(b).

**Considerations: Final Definition of Trial Court Employee**

Since the task force is defining court employees not based on function performed but by employment relationship, there are classes of individuals who perform services for the court who may or may not be court employees under this definition. For example, in some courts, court reporters or court interpreters may be court employees; in others, they may be independent contractors. The task force recognizes that employment relationships may change and that functions currently performed by independent contractors may be performed by employees in the future. The task force is neither recommending nor precluding future changes in employment relationships.

Representatives of the marshals' associations have attended meetings of the task force and consistently expressed their desire not to be included in the definition of trial court employees. Because of the concerns raised by the deputy marshals, the task force decided to conduct a specific survey of the marshals and their staff. The results of the survey of marshals have been compiled. In addition, several pieces of legislation are pending that would merge marshals into the sheriffs' offices. This legislation may make the issue of marshals' employment status moot. Therefore, this issue has not been decided by the task force.

## **PART III**

### **DEFINITIONS OF EMPLOYMENT STATUS OPTIONS: STATE, COUNTY, COURT, AND OTHER**

#### **Background**

The Act specifies that the duties of the Task Force on Trial Court Employees include the examination and outlining of issues relating to the establishment of a local personnel structure for trial court employees under:

- Court employment;
- County employment, with the concurrence of the county and the courts in the county;
- State employment, with the concurrence of the state and the courts in the county; and
- Other options identified by the task force.<sup>24</sup>

The Act did not define these status options. For example, it did not define whether court employment meant a single trial court employer or 58 independent trial court employers. It did not define whether state employment meant state judicial branch employment or some other form of state employment, such as employment in the executive branch, the California State University system, or the University of California system.

The Act also specifies that the task force is to prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.<sup>25</sup>

Since the various employment status options were not defined by statute and since employees would need to know what these employment status options meant in order to participate in an advisory vote, the task force developed working definitions of state, county, and court employment that differ from each other. Since the legislation specified that the task force could consider state, county, and court status options, the task force concluded that these status options should be clearly different.

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<sup>24</sup> Gov. Code, § 77603(g).

<sup>25</sup> Gov. Code, § 77603(h).

### **Employment Status Definitions**

State employment is defined by the task force as state judicial branch employment as opposed to some other type of state employment, since the trial courts are part of the judicial branch of government and subject to the California Rules of Court adopted by the Judicial Council. County employment is defined as employment in a state-supported county personnel structure in which employees are part of the county personnel system. This employment status existed in some courts prior to the passage of the Act, with the exception of the change to state responsibility for the financing of court operations. Court employment is defined as employment in an independent court structure separate from the state and the county.

The definitions of state, county, and court employment describe the employment status, hire and fire authority, and meet and confer processes, as well as the final authority for determination of economic and noneconomic benefits under the state, county, and court employment options. The task force used these definitions to design personnel system models that would apply under each status option. At this point, the task force has not identified a need for an other status option. However, the task force may reconsider this issue once all models are completed, survey results are analyzed, and the advisory vote and public entity poll results are reviewed.

The task force developed a matrix to display its definition of each employment status option. (See Exhibit III-1, which follows.)



Exhibit III:1 is attached.

## PART IV

### COMPONENTS OF A PERSONNEL SYSTEM: THE RECOMMENDED MODELS

#### General Background of Recommended Models

The Act specified that the Task Force on Trial Court Employees recommend a personnel structure for trial court employees. However, it did not define the term *personnel structure*, leaving the task force to determine what might be included within that term.

In defining what the Legislature intended by the term *personnel structure*, the task force considered the duties assigned to it by the Act. The Act specifies that the task force is to survey and document seven aspects of a personnel structure: court employee status, classification, salary, retirement systems, benefits, terms and conditions of employment, and labor relations.<sup>26</sup> The task force decided that its recommendations for a new personnel structure should cover these topics and developed models to describe each of them. Each model includes a set of recommendations regarding a particular personnel structure component. These models were designed to apply regardless of the ultimate employment status of court employees. The impact of the models under each employment status option were then analyzed separately. The models designed by the task force for classification, salary, employment protection systems, meet and confer, retirement, and benefits are discussed in detail in this part.

In developing each model, the task force followed a similar procedure. Before beginning work on the model, the task force received education about the specific topic and identified and discussed any issues relating to the topic. The task force then identified assumptions or principles underlying the topic that might guide the model development. The task force articulated its objectives or basic approaches in designing the model before creating the model. Each model required at least three months to complete, from education to final adoption of the model. Once each model was adopted, it was posted to the Web site. The task force then tested the models against the various working status option definitions (state, county, and court) to identify any issues that needed further examination and to consider the impact of the models under each employment status option.

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<sup>26</sup> Gov. Code, § 77603.

The task force is currently in the process of receiving education and discussing transition issues and various types of trial court employee benefits. The benefits fall into four general categories and are being studied separately:

- Group insurance benefits;
- Accrued leave benefits;
- Deferred compensation benefits; and
- Other employer-provided benefits such as training, professional development, dependent care, flextime, transportation allowances, transit pass subsidies, and paid leave such as bereavement leave and jury duty.

The task force is currently considering these issues and has not included any findings regarding them in this interim report. Prior to the trial court employee advisory vote and public entity poll, the task force intends to develop assumptions, objectives, and models for these aspects of the personnel system. In initial discussions, the task force has articulated its goal to protect the benefits of current employees.

The development and substance of each model adopted by the task force to date, as well as the consequences of each model under each employment status option, are discussed in this part of the interim report.

## A. Classification and Salary

### Background

The Act charges the Judicial Council with submitting findings and recommendations to the Legislature for the establishment of a system of uniform court employee classification, which may provide for local flexibility. Classification is a group of jobs sufficiently alike with respect to their duties and qualifications to justify their being covered by a single job title and salary. Job classifications are identified for the purpose of establishing salary ranges. The classifications recommended by the Judicial Council shall include duty statements, minimum qualification, and salary ranges. The classifications shall be broad enough so that the employees and their managers have maximum flexibility to accommodate the needs of the courts and the employees.<sup>27</sup> Although the task force is not specifically charged with making recommendations concerning classification or salary, its members concluded that because classification and salary are integral to any personnel system, a broad policy recommendation to the Judicial Council on these issues should be made.

The task force will make a recommendation to the Judicial Council on classifications and salaries and provide information collected from the Trial Court Employee Survey. The Judicial Council will use this data on trial court employees when formulating its recommendations to the Legislature for a system of uniform court employee classifications and salary ranges.

### Education: Classification and Salary

Task force members were provided the following education concerning classification and salary:

- An overview of the California trial court system, describing the classification differences and similarities among the trial courts based on the size of the court.
- A presentation on basic classification and compensation concepts, including common terms used in the classification process, such as job family, job series, job classification, employee, and position. Information was also provided on the importance of job classification as a tool in public personnel management and its use as the foundation for other personnel processes, such as recruitment, selection, training, performance management, and discipline.
- Basic information concerning the relationship of classification to salary, including:

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<sup>27</sup> Gov. Code, §77605(a).

- Grouping similar jobs that perform similar work with nearly the same level of difficulty into job families;
- Creating classifications, equal or comparable in value to the organization, within these job families; and
- Grouping jobs into classifications for the purpose of establishing salary rates.
- Various classification and compensation policies and issues, including information about:
  - Specific classification plans;
  - Generic classification plans;
  - Market placement policies; and
  - Factors that may complicate classification and compensation policies.
- A presentation on the personnel structure of the University of California and California State University at both the systemwide and local campus levels, including in-depth information about classification and compensation in these decentralized personnel systems.
- A presentation on the basic personnel structure components of the executive and judicial branches of state government.
- An educational presentation on the background and current use of the *Trial Court Model Classification Manual*, adopted for use by the trial courts in August 1996.

#### **Assumptions and Objectives: Classification and Salary**

The task force used the following assumptions and objectives in developing recommended models for classification and salary:

- The state will not delegate its authority to set the budget level for the courts.
- Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997.
- State funding levels will not significantly change as a result of the new personnel structure.
- Current personnel systems contain substantial variations among counties and courts. These variations may continue to exist under the new system.
- . . . The Judicial Council shall submit findings and recommendations to the Legislature relative to the establishment of a system of uniform court employee classifications, which may provide for local flexibility. These classifications shall include duty statements, minimum qualifications and salary ranges. The classifications shall be broad enough so that the employees and their managers

have maximum flexibility to accommodate the needs of the courts and the employees.<sup>28</sup>

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<sup>28</sup> Gov. Code, § 77605(a), Cal. Rules of Court, rule 810.

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<b>Recommended Classification Model</b>
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The task force recommends that the Judicial Council:

- I. Establish a common classification language for all trial courts to use that allows each court to:
  - A. Continue to use existing classification titles;
  - B. Determine, within broad classifications, the appropriate classification for each position; and
  - C. Establish new local classification titles.
- II. Create a uniform system of broad classifications that covers all jobs performed in courts, using the *Trial Court Model Classification Manual* as a starting point (and avoiding other as a classification).
- III. Require that the assignment of a position to a broad classification shall be based on duties performed.
- IV. Provide descriptions of:
  - A. Overall general principles and guidelines for establishing minimum qualifications for all classifications by individual courts; and
  - B. Commonly recognized minimum qualifications of individual broad classifications.
- V. Establish a process for maintaining, periodically reviewing, updating, and creating additional classifications within the uniform classification system.

### Considerations: Classification

The task force used the classification and salary assumptions in developing its broad recommendations to the Judicial Council for the development of a system of classification. The task force was cognizant of the legislative intent of the Act to maintain local flexibility and accommodate the needs of the courts and employees. The classification model created by the task force meets the mandate of the Act and was adopted with unanimous agreement.

To meet the required objective of a personnel system that would have uniform statewide applicability and promote organizational and operational flexibility,<sup>29</sup> the task force determined that a common language would be required for the statewide classification system. The *Trial Court Model Classification Manual* is recommended as a starting point for the creation of this common language. The common language will be used for classification discussions among courts and the Judicial Council and the executive and legislative branches and will ensure consistency for budgeting and other operational purposes.

However, the model allows the trial courts to continue to use their current classification titles. The recommendation to the Judicial Council calls for the creation of broad classifications. The model allows each court to insert its local classifications within the broad classifications, as appropriate.

The concept of a broad classification system can be illustrated as follows:

The job titles for positions that perform similar duties might include Deputy Court Clerk, Superior Court Clerk, and Courtroom Clerk. These positions might then be described under a broad common-language classification title such as Courtroom Clerk, which would represent one of the broad classifications recommended by the Judicial Council. Courts would use the broad common-language classification title of Courtroom Clerk to describe their positions that have similar duties that fall within the broad classification. The courts could continue to use their existing classification titles for local purposes. However, the broad classification title of Courtroom Clerk would become the term used for classification discussions between courts and the Judicial Council. This common classification language would ensure consistency for budgeting purposes and communication with other state entities.

To ensure that trial court positions are appropriately classified, the task force included in its model a requirement that the assignment of a classification within a

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<sup>29</sup> Gov. Code, § 77605(b).



broad classification reflect the actual duties performed by the employee, not merely the title of the classification held. For example, if a position classified as Courtroom Clerk is assigned to perform technical accounting tasks, the trial court should classify this position under the broad classification of Account Technician, a classification more reflective of the actual duties performed by the employee.

Finally, the task force recommends that the Judicial Council develop a method for updating and maintaining the classification system. The task force concurred that the Judicial Council is the appropriate entity to develop procedures and processes for maintaining, reviewing, updating, and creating additional broad model classifications to reflect changes in the specific classifications made by trial courts.

**Impact for Employment Status Options: Classification**

The recommended classification model would essentially work the same under any of the employment status options of state, court, and county, and the impact of the model under each of the status options is generally the same. Under each employment status option, the court would be responsible for classifying positions and allocating them to the broad common-language classification.

<b>Recommended Salary Model</b>
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The task force recommends that the Judicial Council:

- I. Identify broad salary ranges for each uniform classification encompassing the existing lowest and highest salary ranges.<sup>30</sup>
- II. Establish a system to allow individual trial courts to establish their own salary ranges based on the local market and other local compensation-related issues such as difficulty of recruitment or retention.
- III. Set base salaries at current salaries; any future adjustments are subject to negotiation and/or state-funded salary-range changes.
- IV. Establish a process for maintaining, reviewing, and updating the broad salary ranges.

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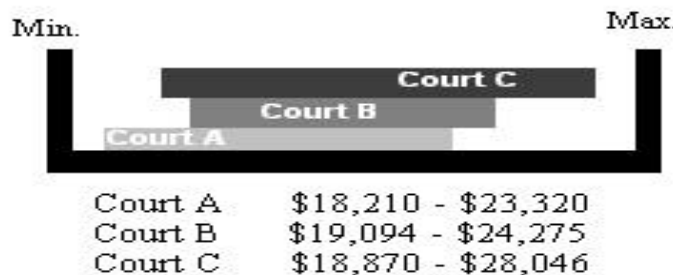
<sup>30</sup> These salary ranges are subject to future modification and negotiation. The broad ranges reflect actual salaries and do not set them.

### Considerations: Salary

The recommended salary model is compatible with the assumption that state funding levels will not significantly change as a result of the new personnel structure. The model also meets the intent of the Legislature that no employee in the trial court system shall sustain a salary reduction as a result of the new personnel structure and was adopted with unanimous agreement. The recommended salary model creates a system of decentralized management and does not reduce salaries or require substantial cost increases.

The model creates a baseline salary system by establishing a broad salary range for each uniform broad classification and documenting the existing salary ranges of that classification within each trial court. The current individual court salary ranges for each of the classifications would be incorporated into the broad salary range. The minimum of the salary range in the lowest-paying court and the maximum of the salary range in the highest-paying court would become the minimum and maximum of the broad salary range. It is possible that within the broad salary range, the individual trial court ranges may overlap. An example illustrating this point is shown here:

#### Courtroom Clerk Broad Salary Range



As shown in the example, the model allows the current salary range for each individual court to be placed within the broad salary range. Every employee of each individual court will have the ability to advance to the maximum salary within the individual court salary range for his or her classification. Concerns were raised that these broad ranges could put a cap on future negotiations. However, as indicated in the footnote in the model, the salary ranges are subject to future modification and would be subject to local negotiations that would allow an individual trial court's maximum salary range to move up the broad salary range. Likewise, the model allows the maximum of the broad salary range to increase to the level of the salary range in the highest-paying trial court.

In keeping with the intent not to reduce the salary of a trial court employee, all current employees will enter the new system within the existing salary range of their individual court. The composite of current employees' salary ranges in each broad classification creates the broad salary range for that classification and reflects existing salaries for that broad classification. The broad ranges reflect actual salaries and do not set them.

The model also accommodates the concern of the courts for flexibility in establishing and revising their own salary ranges based on local market and management needs. In addition, the task force recommends that the Judicial Council develop a process for maintaining and updating the compensation system.

**Impact for Employment Status Options: Salary**

The recommended salary model would essentially work the same under any of the employment status options of state, court, and county. Under each employment status option, the courts would be responsible for setting their individual salary ranges and for the impact of those salary ranges on their authorized budgets.

In addition, the task force received information regarding the availability of a civil service system for court employees under state, court, and county employment status options. The task force learned that under the state judicial branch status option, the California Constitution, article VII, section 4, precludes trial court

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<sup>31</sup> *Pugh v. Sees Candies* (1981) 116 Cal.App. 3d 311, 330.

employees from inclusion in the state civil service system. Under the court employment status option, no civil service system presently exists. If a civil service system were to be created under the court employment status option, the Legislature would need to approve statutory amendments, which are more feasible than constitutional amendments. Under the county employment status option, county civil service systems currently are available.

**Assumptions and Objectives: Employment Protection System**

The task force did not adopt formal assumptions and objectives with respect to an employment protection system for trial court employees. However, in the course of discussing alternative employment protection systems, the task force agreed to the following approach for an employment protection system for trial court employees:

- Aim for broad provisions;
- Achieve a system with statewide applicability;
- Achieve a system with local flexibility;
- Identify core elements and principles; and
- Provide the ability to organize at the local level.<sup>32</sup>

The task force also agreed that the model should consider potential disruption to trial courts and identify the employees to whom the model would apply.

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<sup>32</sup> Issues relating to the meet and confer process, including the ability to organize at a local level, are discussed in the section regarding the meet and confer model.

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<b>Recommended Employment Protection System Model</b>
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- I. An employment protection system is legally available to the extent it is not excluded by the constitution. To the extent that the particular employment protection system proposed by the task force is precluded by statute, statutory amendments may be necessary.
- II. No changes are recommended to local systems, except that each local system shall include, but not be limited to, the following elements:
  - A. Employees may be laid off based on the organizational necessity<sup>33</sup> of the court. Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.<sup>34</sup>
  - B. The employee protection system shall include progressive discipline, as defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - C. *Employees*, as used in item II., means all employees other than:
    - 1. Subordinate judicial officers. (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639); and
    - 2. Managerial, confidential, temporary, limited-term, and probationary<sup>35</sup> employees who may be excluded from this employment protection system in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - D. This employment protection system shall not alter the fact that court employment is authorized and established by statute, and the termination of such employment shall not be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract, either implied or express. Unless modified through meet and confer or local trial court personnel policies, procedures, or plans, the procedure for any employee seeking a remedy who believes that the employing court has not complied with this employment protection

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<sup>33</sup> A layoff for organizational necessity, means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

<sup>34</sup> A generally accepted definition of *cause* is, "A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power" (*Pugh v. Sees Candies* (1981) 116 Cal. App. 3d 311, 330).

<sup>35</sup> Probationary employees sometimes are referred to as introductory employees.

system or who challenges the disciplinary decision shall first exhaust available administrative remedies provided by the employing court. In providing such administrative remedies, the employing court shall establish a lawful due process procedure to review disciplinary decisions that by law require a due process procedure. The lawful due process procedure shall be defined by local trial court personnel policies, procedures, or plans subject to meet and confer, as applicable.<sup>36</sup> Any impartial hearing officer required by the lawful due process procedure in a postdeprivation due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable. At a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court. The denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate.

- III. Nothing herein shall preclude the provision of enhanced employment protection systems through meet and confer or local trial court personnel policies, procedures, or plans.

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<sup>36</sup> Under the state and federal Constitution, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements. (See *Board of Regents v. Roth* (1972) 408 U.S. 564, 576–77; Cal. Const. art. I, § 7.) In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that at a minimum, preremoval safeguards must include: (1) notice of the proposed action; (2) the reasons therefor; (3) a copy of the charges and materials on which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. In addition to these preremoval safeguards, the employee also is entitled to a postdeprivation due process hearing, which can be given before or after the discipline or discharge is imposed. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545–47.) In general, the following elements are typical in a postdeprivation due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.

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### Considerations: Employment Protection System

The task force determined that it was necessary to establish a minimum employment protection standard for all trial court employees. The task force thus identified two core elements to be included in the employment protection system for trial court employees. First, discipline of trial court employees shall be for cause, with certain exceptions specified in the model. Second, the trial court employment protection system shall include progressive discipline.

The task force recognized that many court employees currently may have employment protection systems that include progressive discipline and a cause standard for discipline. However, in creating an employment protection system model, the task force determined that these core elements should be considered minimum standards for all trial court employees.

In creating the model, the task force considered that courts should maintain the authority to lay off employees based on the organizational necessity of the court. Thus, the model states, Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause. A layoff for organizational necessity is defined as a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

The task force also discussed and resolved to whom the model should apply. Subordinate judicial officers are excluded from the employment protection model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did not define the terms *managerial*, *confidential*, *temporary*, *limited term*, and *probationary*, but instead determined that those terms should be defined through local procedures, subject to meet and confer, as applicable.

By including a cause standard for discipline up to and including termination, the employment protection system model provides trial court employees with a property interest in their employment. Under the state and federal Constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements.

Thus, under the employment protection system model, the employer would be required to comply with procedural due process requirements. In *Skelly v. State*

*Personnel Board*,<sup>37</sup> the California Supreme Court held that at a minimum, preremoval safeguards required by procedural due process must include (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. In addition to these preremoval safeguards, employees also are entitled to postdeprivation due process rights in the form of an evidentiary hearing, which can be given before or after the discipline or discharge is imposed. In general, the following elements are typical in a postdeprivation due process proceeding: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.

With respect to the evidentiary hearing required by procedural due process, the task force expressed concern that any impartial hearing officer required in a postdeprivation due process hearing be appointed through procedures adopted through the meet and confer process, as applicable. Where the meet and confer process is not applicable, the court must adopt local procedures to appoint such an impartial hearing officer. Regardless of the method of adoption of procedures to appoint such an impartial hearing officer, the model states that at a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court.

The task force raised concerns about other statutory rights that trial court employees currently have with respect to whistle blowing and retaliation by virtue of being considered county employees. The task force is concerned that trial court employees maintain the existing statutory protections with respect to whistle blowing and retaliation that currently apply to trial court employees as county employees. The task force agreed that, depending on which employment status the Legislature ultimately provides for trial court employees, statutory amendments may be required to maintain the statutory protections that currently apply to trial court employees as county employees with respect to whistle blowing and retaliation.

The task force recently raised questions about bumping and transfer rights that some court employees currently have by virtue of being considered county employees and decided these issues would be decided at the local level.

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<sup>37</sup> *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215.

**Impact for Employment Status Options: Employment Protection System**

The employment protection system model applies equally under each employment status option. The employment protection system model addresses the issue of employment protection from a broad policy perspective by identifying the core elements of an employment protection system and leaving the details of the system to the trial courts. By stating that [n]o changes are recommended to existing systems, except that each local system shall include, but not be limited to, the [elements identified in the model], the model proposes a floor, or minimum standard, which all trial courts must provide to the employees specified in the model. The model does not provide a ceiling for employee rights. Therefore, under this model, employees currently in at-will systems will be provided with the additional rights identified in the model. Employment protection systems that offer more rights than those contained in the model will not be affected by the model, to the extent that the existing systems are allowed by law.

The model states that court employment protection systems shall include progressive discipline. Under the model, progressive discipline will be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer requirements, as applicable. Thus, those courts that currently do not have progressive discipline will be required to adopt a policy of progressive discipline.

The employment protection system model includes a cause standard for discipline up to and including termination. Those courts that currently do not have a cause standard for discipline, but instead have a system with fewer rights for employees (for example, an at-will system), at a minimum will be required to adopt a cause standard for discipline as set forth in the employment protection system model.

By including a cause standard for discipline up to and including termination, the employment protection system provides trial court employees with a property interest in their employment, which is protected by the due process clauses of the federal and state Constitutions. Thus, procedural due process rights would attach in such a system. If courts currently do not have lawful due process procedures for reviewing disciplinary decisions that by law require a due process procedure, they must establish them. Moreover, as specified in the model, the lawful due process procedure must include a procedure to appoint an impartial hearing officer in a postdeprivation due process hearing. This impartial hearing officer may not be an employee or judge of the employing court.

Subordinate judicial officers are excluded from the model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did

not define the terms *managerial*, *confidential*, *temporary*, *limited term*, or *probationary*, but instead left the definitions of those terms up to local procedures, subject to meet and confer requirements, as applicable.

## C. Defined-Benefit Retirement Plan for Current Employees

### Background

The task force recognizes that protecting the vested retirement benefits of current court employees in county defined-benefit retirement plans and ensuring that employees do not lose the benefits and expectations they currently enjoy when they transition to the new personnel system is a high priority. *Defined-benefit retirement plans* are those retirement plans with specific benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law. *Defined-contribution retirement plans* are those retirement plans that require a specific level of contribution but do not provide a specific benefit. This model focuses on defined-benefit retirement plans; the task force will address defined-contribution plans during its discussions regarding benefits prior to the final report.

Trial court employees are currently members of county defined-benefit retirement systems that vary greatly from county to county. Not only do the benefits contained in the local systems vary, but some counties are covered by social security while others are not. Developing a retirement model that does not affect the benefits of current employees and does not affect social security contribution requires particular attention.

The task force initially addressed only the current trial court employees. Current employees are defined as those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system. The task force intends to address retirement plans for future employees during discussions regarding benefits prior to the final report.

### Education: Defined-Benefit Retirement Plan for Current Employees

The task force first received education regarding retirement systems in general. Representatives from the California Public Employees Retirement System (CalPERS) provided general education about retirement systems and about CalPERS in particular. Also, task force member Robert Walton, Assistant Executive Officer, Governmental Affairs, and David Christianson, Legislative Manager, Governmental Affairs, from CalPERS, provided expert advice. Contract actuarial consultant Drew James of William M. Mercer, Inc., responded to questions about current county retirement systems. Based on this education, the task force determined that it needed answers to specific questions before pursuing assumptions, objectives, and a model for retirement systems. Some examples of the questions raised by the task force are:

- Is there a way to design a system that would allow court employees to maintain their current benefits regardless of employment status?
- If individual courts opt to be independent employers, with their own retirement systems, how could administrative costs be minimized for small courts?
- Could some court employees within a court elect to remain in their county retirement plan while other court employees in the same court choose a newly created plan?
- If current employees remain in county retirement systems while any new employees become members of a newly created system, what effect would this have on social security coverage?

Specific questions were drafted and sent to CalPERS and Mercer. Responses were received from both entities and were reviewed by the task force. The task force also received education regarding the state judicial branch retirement system and the social security system.

The task force reviewed the statutes governing the conversion of employees of the County Offices of Education from county employment to independent employment within the newly created County Offices of Education.<sup>38</sup> In that case, employees were allowed to choose to join the State Employee Retirement System or to remain in their county retirement systems. The decisions, once made, could not be rescinded. For those employees remaining in the county system, the same appropriations and transfers of funds were made to the retirement fund as required of the county under the county retirement law.

### **Assumptions and Objectives: Defined-Benefit Retirement Plan for Current Employees**

The task force subsequently developed assumptions and objectives as follows.

#### ***Assumptions***

- State funding levels will not significantly increase as a result of the implementation of the trial court personnel system.
- The trial courts will exist as public agencies with the ability to contract for retirement benefits within the scope of the defined-benefit system.
- The model assumes no changes in current federal law.
- Existing state law regarding retirement provisions may require changes as a result of implementation of the trial court personnel system.

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<sup>38</sup> Educ. Code, §§ 1312–1313.

- Substantial financial impacts on retirement systems and employee/employer contributions will not be created as a result of the implementation of the trial court personnel system.
- Any successor retirement system will be a defined-benefit system. (This model will not address defined-contribution plans, which the task force will address separately.)
- Any successor system will not assume any of the liabilities or assets from county retirement systems.
- Social security is a tax. Whether an employee pays social security is determined by a variety of factors, including the employer's agreement with the social security administration.
- If trial court employees remain members of the county retirement system, the county shall be responsible for determining any plan design changes to the level of retirement benefits. The employer shall have the authority to determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.

### ***Objectives***

- The level of retirement benefits of trial court employees will not be reduced as a result of the implementation of the trial court personnel system.
- Trial court employees remaining in county retirement systems must continue to receive the same retirement plan design benefits as county employees. The employer shall determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.
- The vested rights accrued by employees under their current retirement systems will be protected.
- Any successor defined-benefit system will provide for reciprocity with current county defined-benefit systems.
- To the extent permitted by law, social security contributions or noncontributions under current county retirement systems will not be modified by implementation of the trial court personnel system.

<b>Recommended Defined-Benefit Retirement Model for Current Employees<sup>39</sup></b>
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- I. If court employees remain county employees and are members of county retirement systems,<sup>40</sup> they shall continue in retirement membership with the county system.
- II. Court employees who are subject to an employment status change and who are members of county retirement systems on the date of implementation may continue retirement membership with the county system. For those employees who continue retirement membership with the county system, the same rate of contribution shall be paid by the state or court, as the case may be, to the county retirement system for such employee as the rate of contribution required of the county under the county retirement system.
- III. This model does not exclude the possibility that current employees may have a future option of joining a new defined-benefit retirement plan that may be developed subject to meet and confer.

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<sup>39</sup> Prior to the issuance of the final report, the task force will address defined-benefit retirement issues for employees hired after the implementation date.

<sup>40</sup> *County retirement systems* in this model means 1937 Act or CalPERS or independent retirement systems or plans.



### **Considerations: Defined-Benefit Retirement Plan for Current Employees**

In item I, the model recognizes that, if court employees remain county employees, no changes in the current retirement systems are anticipated. In item II, the model provides court employees who undergo a status change to state or court the option of remaining in their county retirement systems, following a plan similar to that used for employees in the County Offices of Education.<sup>41</sup> Item III makes it clear that the model precludes neither a new statewide plan nor development of new local retirement plans. The task force will address retirement plans for new employees hired after implementation of the new personnel system subsequent to publication of the interim report.

This model ensures that, regardless of the employment status ultimately adopted, the retirement benefits of current employees are protected. This protection will require legislation similar to the statutes relating to the retirement status of employees of the County Offices of Education during their employment status transition. The California Association of Counties has informed the task force that it will support the provision to allow current employees to remain in county defined-benefit retirement systems. Issues relating to new employees have not yet been addressed by the task force. These issues will be addressed in the final report.

This model will not increase current court, county, or state costs since these employees are already in the county retirement systems. The cost impact of addressing the retirement system for new employees or of allowing current employees a choice of retirement systems cannot be analyzed until the results of the survey of trial court employees have been analyzed and actuarial calculations completed.

### **Impact for Employment Status Options: Defined-Benefit Retirement Plan for Current Employees**

#### ***Employment Status Options***

The task force also considered the impact of current trial court employees choosing to remain in their county retirement plans under each employment status option. These effects are shown in Exhibit IV-1, at the end of this part.

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<sup>41</sup> Educ. Code, § 1312–1313; see “Education: Defined-Benefit Retirement Plan for Current Employees” for a description of this process.

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The impact of current employees choosing to remain in their court retirement plans is the same under the state and court employment status options. The court, and ultimately the state, contributes to the county retirement system the total cost for each employee who remains in the county retirement plan, including the employer contribution set by the retirement system, the member (employee) contribution, and the bargained employer-paid member contribution. The state or court deducts the member contribution from the employee's paycheck. The percentage of the employee contribution paid by the employer is subject to bargaining. Employees would receive the defined-benefit plan bargained by county employees and may have a future option to join a new defined-benefit retirement plan that may be developed subject to meet and confer.

Under the county employment status option, all court employees would remain in their local county retirement plans. The state or court would reimburse the county for the total cost for each employee, including the employer contribution, the member (employee) contribution, and any bargained employer-paid member contribution. The percentage of the employee contribution paid by the county would be subject to bargaining. The county would determine retirement plan benefits through local personnel policies and meet and confer processes, where applicable. The state or court would be required to fund the level of benefits established by the county.

As noted earlier, any analysis of the cost consequences of addressing new employees differently or of allowing current employees a choice of retirement systems has been postponed until the results of the trial court employee survey have been analyzed and a subsequent actuarial analysis has been completed.

### ***Social Security***

In determining the impact of its proposed retirement model for current employees under each of the status options, a major consideration is whether or not employees would be covered by social security. The task force does not want its decisions to affect the current coverage levels. Currently, ten courts are not covered by social security, and their employees do not contribute to social security. Therefore, the task force is reviewing issues regarding the impact of the various employment status options on social security coverage for current employees.

## **D. Meet and Confer**

### **Background**

The task force agreed that labor relations is an integral part of a personnel structure for trial court employees. The task force prepared a meet and confer model, which addresses labor relations in the trial courts. The meet and confer model generally defines trial court employees and trial courts' rights and responsibilities with respect to labor relations.

### **Education: Meet and Confer**

The task force received education regarding labor relations and the meet and confer process in the trial courts. The task force learned about the history of the meet and confer process in the trial courts and received general information about how the Meyers-Milius-Brown Act,<sup>42</sup> the Court Employee Labor Relations Rules,<sup>43</sup> and Assembly Bill 1438,<sup>44</sup> codified at Government Code sections 68650 through 68655, apply to the trial courts and trial court employees.

The task force learned that the Court Employee Labor Relations Rules were adopted in April 1997 and became effective January 1, 1998. The Court Employee Labor Relations Rules extend to trial court employees and the trial courts the right and the responsibility to meet and confer in good faith over matters the court has authority to determine. Government Code sections 68650 through 68655 (the labor relations statute) acknowledge the adoption of the rules and provide that they have the force of law, notwithstanding any other provision of law.

The task force received an overview and interpretation of the procedure for petitioning for relief for a violation of the labor relations statute or the Court Employee Labor Relations Rules under Government Code section 68654. Pursuant to section 68654, parties may petition the Court of Appeal for relief through a writ of mandate under Code of Civil Procedure section 1085. Currently, there are no specific procedures describing how the Court of Appeal would address such a petition.

The task force was provided with information regarding multiple-employer bargaining units. The task force learned that under current law, bargaining units may contain both court and county employees.

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<sup>42</sup> Gov. Code, §§ 3500–3510.

<sup>43</sup> Cal. Rules of Court, rules 2201–2210.

<sup>44</sup> Escutia; Stats. 1997, ch. 857.

The task force also learned about labor relations in other public agencies. Representatives from the University of California, California State University, and California Department of Personnel Administration gave presentations to the task force regarding labor relations in their particular agencies.

The task force was provided with general information regarding the four major public employment labor relations statutes in California: (1) the Higher Education Employer-Employee Relations Act (HEERA), which covers the University of California and the California State University and their employees; (2) the Dills Act (also known as the State Employer-Employee Relations Act, or SEERA), which covers the state executive branch and most of its employees; (3) the Educational Employment Relations Act (EERA), which covers the public schools (K-12) and community colleges and their employees; and (4) the Meyers-Milias-Brown Act (MMBA), which covers local government agencies and their employees.

**Assumptions and Objectives: Meet and Confer**

The task force did not adopt formal assumptions and objectives with respect to a meet and confer model for trial court employees.

<b>Recommended Meet and Confer Model</b>
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- I. Existing labor relations statutes and the Court Employee Labor Relations Rules of Court remain in place except for changes necessitated by a particular employment status option (state, county, court, or other) or changes related to the enforcement of the Court Employee Labor Relations Rules of Court.
- II. The meet and confer process for each court will be conducted on a local level.
- III. This meet and confer model does not apply to unrepresented employees.
- IV. Employer and union representatives shall be authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals.<sup>45</sup>
- V. Unless otherwise agreed, employer and union representatives shall negotiate a single agreement for each bargaining unit.
- VI. The Labor Relations Statute, Government Code sections 68650 through 68655, will be amended to provide that:
  - A. If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a reference to make findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
  - B. The Judicial Council shall adopt a Rule of Court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.

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<sup>45</sup> The issue of involving the state as the funding source needs to be resolved.

**Considerations: Meet and Confer**

The task force agreed that the existing Court Employee Labor Relations Rules<sup>46</sup> and the labor relations statute,<sup>47</sup> codified at Government Code sections 68650 through 68655, should remain in place and be changed only as necessitated by a particular status option or as they relate to the enforcement of the Court Employee Labor Relations Rules of Court.

The task force agreed to one particular modification to the labor relations statute with respect to the enforcement of the Court Employee Labor Relations Rules of Court. The task force was concerned that as currently drafted, the statute does not provide guidance to the appellate courts with respect to how a particular Court of Appeal would address a petition for relief under Government Code section 68654. More specifically, the task force addressed the following scenario: If, on writ to the Court of Appeal, questions of fact exist, the court may order a referral to a retired judge or justice or a trial court judge, who would take evidence and report findings on the disputed questions of fact. In this situation, what process would the Court of Appeal use to select the fact-finding referee or special master? To address the task force's concern that the affected trial court not be involved in the review of an alleged violation of the labor relations statute or the Court Employee Labor Relations Rules of Court, the task force agreed that the labor relations statute, Government Code sections 68650 through 68655, should be amended to provide the following:

- If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a referral for the purpose of making findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
- The Judicial Council shall adopt a rule of court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.

The task force also agreed that the model did not need to address whether court and county employees may remain in the same bargaining unit. Rule 2206 of the California Rules of Court currently states, "Nothing contained in the rules of this division is intended to preclude court employees from continuing to be included in

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<sup>46</sup> Cal. Rules of Court, rules 2201–2210.

<sup>47</sup> Assem. Bill 1438 [Escutia]; Stats. 1997, ch. 857.

representation units which contain county employees. The task force agreed that this rule need not be amended.

The task force recognized in the model that the issue of involving the state as the funding source ultimately needs to be resolved. The model itself does not address this issue.

**Impact for Employment Status Options: Meet and Confer**

The meet and confer model applies equally under each employment status option. As indicated in item I of the model, the existing labor relations statute, Government Code sections 68650 through 68655, and the Court Employee Labor Relations Rules, rules 2201 through 2210 of the California Rules of Court, remain in place with the exception of any changes necessitated by a particular status option and the particular change referenced in item VI of the model related to the enforcement of the statute and rules.

Item IV of the model states that employer and union representatives are authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals. Under each trial court employee employment status option, the employer with whom union representatives meet and confer changes. Under the state employment status option, union representatives negotiate with the local trial court administration with the involvement of the state judicial branch. Under the court employment status option, union representatives negotiate with the local trial court administration. Under the county employment status option, union representatives negotiate with county and local trial court administrations.

In addition, under each trial court employee employment status option, the employer with the final authority to determine economic and noneconomic benefits also changes. Under the state employment status option, the court, with the involvement of the state judicial branch, has the authority to determine economic and noneconomic benefits. Under the court employment status option, the court has the authority to determine economic and noneconomic benefits. Under the county employment status option, the county board of supervisors and the court jointly have the authority to determine economic and noneconomic benefits.

Under each trial court employee employment status option, the state determines the funding level of the courts. A concern was raised regarding the possibility of a situation in which negotiations between union representatives and the employer take place before the level of state funding is known. In this situation, a memorandum of understanding may be adopted that includes salary increases for

local court employees when it is unknown whether the state ultimately will provide the funding for the salary increases. The task force concluded that an outstanding issue that eventually needs to be addressed is how to involve the state as the funding source in the meet and confer process under each of the trial court employee employment status options.



Exhibit IV:1 is attached.

method for submitting the issue of employment status to an advisory vote of trial court employees in each county. <sup>48</sup>The task force set up a process for an advisory vote of court employees regarding their employment status.

The statute requires only the determination of a method for conducting the advisory vote and does not specify whom the vote should inform, who should conduct the vote, or when the vote should be conducted. After careful consideration, the task force decided to conduct the vote prior to the final report and use it to inform the task force's recommendations regarding trial court employee personnel structure and employment status. In addition, the task force deemed it necessary to obtain the position of affected public entities, including the trial courts and counties, regarding the employment status of trial court employees. The Act requires agreement of the affected parties under state employment, with the concurrence of the state and courts, and under county employment, with the concurrence of the county and courts; court employment is set as the baseline. The public entity poll was developed to allow these entities the opportunity to provide information to the task force regarding their positions relative to the employment status of trial court employees. To ensure a complete and informed final recommendation, consideration will be given to the input of trial court employees and affected public entities.

The task force will take into consideration the results from the advisory vote and public entity poll when formulating its final recommendations regarding the employment status of court employees.

The public entity poll will survey the trial courts and counties. The task force will distribute the poll to trial court administrators and county administrative officers, who must obtain the response for their respective public entities. The state is not being polled in the task force's public entity poll because the task force recognized that the state's position would become clear upon action by the Legislature and Governor. In addition, the task force could not determine which agency would have

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<sup>48</sup> Gov. Code, § 77603(h).

the authority to respond to such a poll for the state executive, legislative, and judicial branches. Therefore, it was decided that the state would not be included in the public entity poll. The task force determined it was necessary to ascertain these public entity positions before recommending a particular employment status.

### **Timing of the Advisory Vote and Public Entity Poll**

The timing of the advisory vote and public entity poll was examined, and the short time between the interim and final reports dictated that both needed to be conducted simultaneously. The task force wanted to consider all the information from the advisory vote and public entity poll in formulating its final recommendations. Therefore, the advisory vote and public entity poll will follow this interim report. It is anticipated that the advisory vote and public entity poll will be conducted in July 1999, with results reported to the task force shortly thereafter.

### **Advisory Vote and Public Entity Poll Content and Education**

The task force realizes the importance of informing employees and public entities about the employment status options before asking them to indicate their preferences. The task force will undertake an educational effort to inform affected parties about the meaning of the employment status options. The content of the questions and education for the advisory vote and public entity poll have not been determined because the task force intends to develop the materials after considering comments received regarding this interim report. The educational process for employees and public entities will take place prior to the vote.

### **Subcommittee for Proposing the Advisory Vote Process**

The task force formed a subcommittee, selected by the full task force, to propose a process for conducting and administering the advisory vote. The subcommittee consisted of one trial court executive officer, one judicial officer, one county representative, and six labor representatives. The subcommittee proposed the following process:

- Use a neutral agency to conduct, tabulate, and supervise the advisory vote;
- Use an entity that works with management and unions; and
- Consult with the Department of Industrial Relations State Mediation and Conciliation Service.

### **Administration of the Vote Process**

In developing the process for the trial court employee advisory vote and public entity poll, the task force established the following goals: (1) have an independent third party conduct the vote, (2) ensure that every employee receives a ballot, and

(3) guarantee the validity of the vote. To meet these three goals, the task force decided to contract with the State Mediation and Conciliation Service, a neutral state agency experienced in administering employee votes, to conduct, tabulate, and report the votes to the task force.

The State Mediation and Conciliation Service will conduct the trial court employee advisory vote and public entity poll. The task force received education from the State Mediation and Conciliation Service regarding its role as a neutral state agency and the methodology the service uses to conduct labor elections when working with labor and management.

The State Mediation and Conciliation Service will use a ballot process that entails mailing a ballot to each employee's home address and to each public entity. Employees and public entities will return their responses by mail directly to the State Mediation and Conciliation Service, which will independently count the ballots and report the results to Administrative Office of the Courts task force staff for analysis. The results of the individual employee vote will remain confidential to the State Mediation and Conciliation Service, and only aggregate employee data will be reported. The individual county and trial court responses to the public entity poll will be made public. Data will be analyzed from several perspectives, including analysis on a regional basis, county basis, individual basis, size of court basis, and proportional basis.

### **Assumptions and Objectives: Trial Court Employee Advisory Vote**

The task force used the following assumptions and objectives in recommending a process for the advisory vote of trial court employees:

#### ***Assumptions***

- The task force, in recommending options for employee status, shall consider the complexity of the interests of the employees and various governmental entities. Their recommendations shall, to the greatest extent possible, recognize the need for achieving the concurrence of the affected parties.<sup>49</sup>
- The Trial Court Funding Act requires agreement from the county and the courts in the county for county employment, and agreement from the state and courts in the county for state employment; the vote must obtain information about second and third preferences.

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<sup>49</sup> Gov. Code, § 77603(g).

### ***Objectives***

- Obtain information about employee preferences regarding employment status options, including second and third preferences;
- Use the results of the advisory vote to help form the task force's final recommendations; and
- Provide education to employees regarding the potential consequences of each status option.

### ***Process***

1. Employees who meet the task force's definition of trial court employee will be eligible to participate in the advisory vote.
2. Employment status options will be defined for the advisory vote.
3. Employees will be provided with education regarding the advisory vote.
4. The advisory vote will include a series of questions regarding employment status options, and employees will be asked about their preferences.
5. The advisory vote will be conducted after the interim report is issued but before the final report is issued.
6. The State Mediation and Conciliation Service will administer the employee advisory vote process and tabulate the results.
7. The task force will consider the results of the advisory vote in making its final recommendations.

### **Assumptions and Objectives: Public Entity Poll**

As mentioned earlier, in addition to the employee advisory vote, the task force will conduct a public entity poll as outlined here. To produce a comprehensive recommendation regarding a trial court personnel structure, including a recommendation regarding employment status, the task force will obtain information regarding the position of trial courts and counties. The task force used the following assumptions and objectives in recommending a process for the public entity poll of affected public entities:

### ***Assumptions***

- The task force, in recommending options for employee status, shall consider the complexity of the interests of the employees and various governmental entities. Their recommendations shall, to the greatest extent possible, recognize the need for achieving the concurrence of the affected parties.<sup>50</sup>

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<sup>50</sup> Gov. Code, § 77603(g).

- The Trial Court Funding Act requires agreement from the county and the courts in the county for county employment, and agreement from the state and courts in the county for state employment; the poll must obtain information about the position of trial courts and counties.

### ***Objectives***

- Obtain the positions of counties and trial courts regarding employment status options;
- Use the results of the public entity poll to form the task force's final recommendations; and
- Provide education regarding the potential consequences of each status option.

### ***Process***

1. Individual counties and trial courts will be eligible to participate in the public entity poll. The poll will be submitted to the court administrator and the county administrative officer.
2. Employment status options will be defined for the poll.
3. Counties and trial courts will be provided with education regarding the public entity poll.
4. The public entity poll will obtain information regarding the positions of the trial courts and counties with respect to the employment status of trial court employees. Each public entity's response will identify the public entity and be publicly available.
5. The public entity poll will be conducted after the interim report is issued but before the final report is issued.
6. The State Mediation and Conciliation Service will administer the public entity poll process and tabulate the results.
7. The task force will consider the results of the public entity poll in making its final recommendations.

## **PART VI**

### **TRIAL COURT EMPLOYEE SURVEY AND DOCUMENTATION**

#### **Background**

The Act established the Task Force on Trial Court Employees and mandated that it complete the following tasks, as specified in the Act:<sup>51</sup>

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;
- Document existing constitutional, statutory, and other provisions relating to classification, compensation, and benefits of court employees; and
- Identify functions relating to trial courts that are provided by county employees.

#### **Assumptions and Objectives: Trial Court Employee Survey**

The task force's objectives in developing the Trial Court Employee Survey were to:

- Meet the statutory requirements of the Act;
- Document current personnel data;
- Obtain data to use as a foundation for recommendations; and
- Determine the baseline to use in anticipating the impact of any changes.

#### **Trial Court Employee Survey**

The task force submitted the Trial Court Employee Survey to all trial court executive officers to complete these tasks. For the task force to make appropriate recommendations, it is essential that the needs and interests of the entire court system, which includes approximately 18,000 trial court employees in 58 county systems, be considered. Among the courts, there are different classification systems, salaries, benefits, retirement systems, and memoranda of understanding. This state-mandated survey is the principal means by which the task force will obtain data regarding personnel and benefits systems currently in place in the trial courts.

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<sup>51</sup> Gov. Code, §§ 77600–77606.

The Administrative Office of the Courts (AOC), in conjunction with the task force, retained William M. Mercer, Inc. (Mercer), a consulting firm, to design the survey and conduct related analyses so that the task force will have access to the trial court employee information mandated by the Act.

Finalization of the data input, database development, and analysis of this personnel information is still underway. The survey necessitated the collection of information about memoranda of understanding, retirement plans, benefits, salaries, and classifications. Much of this information resides in the 58 county personnel offices. The enormity and complexity of the questions resulted in a survey process that was time consuming and challenging for all trial courts to complete.

The task force will use the survey data in its final recommendations and will include results in its final report. The Act requires the task force to document local retirement systems and determine the costs associated with a change in retirement benefits;<sup>52</sup> the survey data will provide the information needed to perform these actuarial calculations.

After giving consideration and due weight to the report of the task force, the Judicial Council will use the salary and classification data of trial court employees from the Trial Court Employee Survey to complete its duty to recommend to the Legislature a system of uniform court employee classifications. The classifications will include duty statements, minimum qualifications, and salary ranges.<sup>53</sup> (See the classification and salary models recommended to the Judicial Council in Part IV, Section A.)

### **Education**

The task force received education regarding the survey process and methodology from Mercer. The consultant presented information about the content and structure of the survey and provided a summary of the survey questions related to classification, pay and benefits, memoranda of understanding, retirement, and employment status.

### **Pilot Testing**

To determine ways to improve the survey instrument, the Trial Court Employee Survey was pilot-tested in two urban courts, one suburban court, and two rural

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<sup>52</sup> Gov. Code, §77603(b–c).

<sup>53</sup> Gov. Code, § 77605(a).



courts. The feedback, suggestions, and problems identified in the pilot test were addressed to the extent possible in the final survey sent to all trial courts.

### **Confidentiality**

Trial courts expressed concern about privacy and confidentiality of personnel information. The Administrative Office of the Courts and the consultant, Mercer, expressed their commitment to the trial courts to protect confidential survey information related to trial court employees. In addition, the use of social security numbers was not permitted in any part of the survey. Data regarding individual court employees will not be released.

### **Survey Definition of Court Employee**

The Trial Court Employee Survey required that all information be completed based on the task force's definition of a trial court employee. (See Part II for the definition.)

### **Survey Reporting Date: June 30, 1998**

June 30, 1998, was the snapshot date all trial courts used in completing the survey questionnaire. The June 30, 1998, date was chosen unanimously by the task force because it was the last date for which the trial courts had complete fiscal-year records. The task force considered the complicating effect of unification and determined that this date was the most appropriate date for obtaining complete and accurate documentation from all trial courts. Trial courts were instructed in the survey to provide a cover letter explaining any significant or noteworthy changes that occurred after June 30, 1998. Examples of such changes include substantial salary increases, significant changes in job classification specifications, and changes resulting from a large classification study.

### **Description of Survey Information**

The Trial Court Employee Survey requests information from trial courts about the following:

- Trial court employee bargaining units, memoranda of understanding, recognized bargaining agents, and unrepresented employees;
- Classification; salary; employment status; demographics (for retirement purposes); and retirement benefits, funding, and administration of court employees;
- Medical, dental, vision, paid time off, long-term disability, life insurance, and other employer-provided benefits for active employees;
- Health and welfare benefits court employees would be entitled to when they retire;

- Deferred compensation plans, including 401(k) and 457 non-core retirement plans;
- Functions provided to the court by non-court employees (county employees, temporary agency employees, independent contractors, or others);
- Funded but vacant positions, to ensure that all possible classifications are identified; and
- Aggregate information about specified non-court employees.

**Documentation of Provisions Relating to Trial Court Employee Classification, Compensation, and Benefits**

The Act states that one of the duties of the task force is to [d]ocument existing constitutional, statutory, and other provisions relating to classification, compensation, and benefits of court employees.<sup>54</sup>

To fulfill the mandate, task force staff is documenting existing constitutional provisions, statutes, and California Rules of Court relating to trial court employees classifications, compensation, and benefits. Documentation of such existing law will be included in the final report.

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<sup>54</sup> Gov. Code, § 77603(e).

## **PART VII**

### **INSTRUCTIONS FOR COMMENTS ON THE INTERIM REPORT OF THE TASK FORCE ON TRIAL COURT EMPLOYEES**

The Task Force on Trial Court Employees welcomes your comments on the interim report and is circulating the report for comment to the counties, judiciary, Legislature, Governor, and local and state employee organizations, as required by the Act.<sup>55</sup> This comment process will give the task force a method for ensuring that the report receives proper consideration and input from interested parties.

The interim report is a report on the work of the task force to date. A final report will be issued in September 1999. Information in the interim report may be subject to modification because of comments received. Your comments will make a valuable addition to the task force's duty to recommend a trial court employee personnel structure. The recommendations of the task force become effective only upon subsequent action of the Legislature, as stated in Government Code section 77606.

#### **Format for Comments**

Comments will be received via mail, fax, and e-mail. If your comment is directed at a specific part of the report, please cite the section and page number; if you are submitting general comments, please indicate relevant sections and page numbers as well.

Along with any comments, please provide your name, title, organization, address, phone number, and fax number so that we may confirm receipt of your comments and contact you with any questions or clarifications, as necessary.

#### **Deadline for Submission of Comments**

The deadline for comments is 5 p.m. on Wednesday, June 2, 1999. Comments received after this date may not be considered by the task force. You may submit comments by mail and fax to:

Ms. Hazel Ann Reimche  
Task Force on Trial Court Employees  
Administrative Office of the Courts  
455 Golden Gate Avenue

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<sup>55</sup> Gov. Code, § 77604(c).

San Francisco, CA 94107  
415-865-4263  
415-865-4328 (fax)

Please send e-mail comments to [tcemployees@courtinfo.ca.gov](mailto:tcemployees@courtinfo.ca.gov).

### Exhibit III-1: Revised Working Employment Status Definitions

The charge of the task force as outlined in Assembly Bill 233, article 1, section 77603(g), is to examine and outline issues relating to the establishment of a local personnel structure for trial court employees under:

- (1) **Court employment;**
- (2) **County employment**, with the **concurrence** of the county and the courts in the county;
- (3) **State employment**, with the **concurrence** of the state and the courts in the county; or
- (4) **Other** options identified by the task force.

	State	Court	County
	A state-supported court personnel structure with local trial court administration	A state-supported trial court personnel structure with local trial court administration (baseline)	A state-supported county personnel structure with local trial court administration
<b>Employment Status</b>	Employees working for the trial court are state judicial branch employees.	Employees working for the trial court are trial court employees.	Employees working for the trial court are county employees.
<b>Hire/Fire Authority</b>	The courts have hire/fire authority, subject to statewide judicial branch and local trial court personnel rules and memoranda of understanding, as applicable.	The courts have hire/fire authority, subject to local trial court personnel rules and memoranda of understanding, as applicable.	The courts have hire/fire authority, subject to county and local trial court personnel rules and memoranda of understanding, as applicable.
<b>Meet and Confer</b>	Employees negotiate with the local trial court administration with the involvement of the state judicial branch (the state determines the state funding level).	Employees negotiate with the local trial court administration (the state determines the state funding level).	Employees negotiate with the county and local trial court administration with the involvement of the local trial court (the state determines the state funding level).
<b>Final Authority for Determination of Economic/Noneconomic Benefits</b>	The court, with the involvement of the state judicial branch, determines the economic and noneconomic benefits.	The court determines the economic and noneconomic benefits.	The board of supervisors and the court jointly determine the economic and noneconomic benefits.

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**Exhibit IV-1:  
Working Impact of Current Employees' Choosing  
County Defined-Benefit Plan**

	<b>Employment Status</b>	
	<b>State/Court</b>	<b>County</b>
<b>Employer Contribution<sup>A</sup></b>	- State/court pays the same employer contribution amount the retirement system requires the county to pay.	- Court pays the same employer contribution amount the retirement system requires the county to pay.
<b>Member (Employee) Contribution<sup>B</sup></b>	- State/court deducts employee contribution from paycheck. State/court transfers funds to county retirement system.	- County deducts employee contribution from paycheck. County transfers funds to county retirement system.
<b>Employer-Paid Member (Employee) Contribution<sup>C</sup></b>	- Bargainable. - State/court pays any employer-paid member contributions to county retirement system.	- Bargainable. - Court pays any employer-paid member contributions to county retirement system.
<b>Plan Benefits</b>	- Benefits shall be the same retirement benefits as provided to county employees.	- Benefits shall be the same retirement benefits as provided to county employees.
<b>Bargaining Defined-Benefit Plan<sup>D</sup></b>	- Employees shall receive the defined-benefit plan bargained by county employees with the county. <sup>E</sup>	- Employees shall receive the defined-benefit plan bargained with the county.

<sup>A</sup> The amount an employer contributes to the plan.

<sup>B</sup> The amount an employee contributes to a plan on his or her behalf; contributions are generally made through a payroll deduction.

<sup>C</sup> Employees' contributions paid for by the employer.

<sup>D</sup> A retirement plan with benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law.

<sup>E</sup> This does not exclude the possibility that current employees may have a future option of joining a new defined-benefit retirement plan that may be developed subject to meet and confer.

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